

Remarks

On page 2 of the present Office Action the Office stated that it found the applicants' traversal of the restriction requirement imposed in the January 15, 2010, Office Action unpersuasive. But the Office merely responded to the applicants' arguments with the conclusory statements and failed to address the applicants' specific reasons delineating why the claims shared unity of invention.

The applicants previously argued that the compounds recited in the claims shared a common structural feature essential to a common activity as TIE-2 modulators. The applicants described in detail the common structure features of the compounds recited in the claims and as a result shifted the burden to the Office to refute the applicants' arguments. But in the present Office Action the Office did not address the applicants' specific arguments; it merely concluded that the compounds lacked a significant structural element. The applicants' respectfully submit that this mere denial is insufficient to satisfy the Office's burden of addressing the applicants' specific arguments.

In view of the foregoing, the applicants reiterate that the compounds recited in claims 1-26 share the common structural features explicitly identified in their response filed February 12, 2010. The Office has not explained why those common structural features do not represent a special technical feature under unity practice.

In addition, the Office asserted that "given that these species contain various functional groups; [sic] their physical properties would differ from one another." But the applicants submit that whether the species have different physical properties is irrelevant to the issue of unity of invention. The critical inquiry for unity of invention is whether the compounds share a common utility, regardless of their other physical properties. As the applicants previously argued, the recited compounds share the common utility as TIE-2 modulators. The Office has not refuted or even addressed this assertion.

Lastly, the Office stated that a search of the claims would be unduly extensive and burdensome. While the applicants are not unsympathetic, such factors are irrelevant to the issue of whether the claims possess unity of invention.

In view of the foregoing, the applicants respectfully request reconsideration of the previously imposed restriction.

In response to the restriction imposed in the present Office Action, the applicants elect Group I with traverse. The Office also required an election of species, which, for Group I, was a species of a particular kinase-dependent disease or condition. In response, the applicants elect (with traverse) cancer as the kinase-dependent disease or condition, a species of the general category of diseases associated with proliferation. *See* paragraph [0122], which describes proliferation as a kinase dependent disease or condition, and paragraph [0125], which describes cancer as a particular type of cellular-proliferative disease state.

The applicants traverse the restriction of the claims of Groups I, II, IV, and V and respectfully submit that the claims of all these groups indeed share a single general inventive concept. All the claims are directed to the use of the same group of compounds sharing common structural features and utility as modulators of kinase dependent processes. The uses are all related as they all rely on this common utility. Claim 1 is directed to a method of treating a kinase dependent disease or condition, which method relies on the underlying utility of the recited compounds as inhibitors of the kinase TIE-2. And Claims 22, 23, 25, and 26 (Groups II, IV, and V) are directed to methods of treating diseases or disorders that are all kinase dependent, like claim 1. Thus, all claims of Groups I, II, IV, and V are directed to methods sharing the common technical feature of treating kinase-dependent processes. As such, the claims of these groups share unity of invention.

For the same reasons the applicants traverse the species election requirement because all the species share the same special technical feature, *i.e.*, the activity of the recited compounds as kinase modulators, kinases being involved in all the recited processes.

Furthermore, because the processes recited in claims 22, 23, 25, and 26 are all kinase dependent, claim 1 is a linking. For this reason as well, Groups II, IV, and V should be rejoined with Group I.

If there are any questions or comments regarding this application, the Examiner is encouraged to contact the undersigned in order to expedite prosecution.

Respectfully submitted,

Date: July 9, 2010

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